

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GRUBHUB INC. AND
TAKEAWAY.COM CENTRAL CORE B.V.,
PLAINTIFFS,

v.

THE KROGER CO. AND
RELISH LABS LLC,
DEFENDANTS.

CASE NO.: 1:21-cv-05312

JUDGE CHARLES R. NORGLÉ

MAGISTRATE JUDGE JEFFREY I.
CUMMINGS

DECLARATION OF PATRICK VIHTELIC
IN SUPPORT OF A MOTION FOR PRELIMINARY INJUNCTION

I, Patrick Vihtelic, declare as follows:

1. I am the Founder and Chief Executive Officer of Defendant Relish Labs LLC d/b/a Home Chef (“Home Chef”). The matters stated herein are true and accurate and based on my own personal knowledge. I submit this declaration in support of the Motion for Preliminary Injunction in the above-captioned proceeding.

HOME CHEF’S FOUNDING AND GROWTH

2. I started Home Chef in June 2013 in my apartment in Chicago, Illinois, inspired by a passion for cooking. I wanted to provide everything needed to bring more delicious, healthy and varied meals and moments to the dining table for hard-working families and individuals throughout the United States, as a convenient and low-cost alternative to grocery shopping.

3. Since its beginning, Home Chef’s business has been creating and delivering meal kits for customers, including fresh, pre-portioned ingredients and easy-to-follow recipes, to help customers prepare and enjoy meals anyone can cook and everyone will love, any night of the week.

4. To start the company, I partnered with a local executive chef to design delicious, easy-to-follow recipes for convenient at-home meal preparation. I built Home Chef's first website on my own. To start and support the business, I used my own personal savings. I also helped deliver meal kits around Chicago using a rented U-Haul truck. A true and correct copy of a 2018 article with additional details, as available online at

<https://www.builtinchicago.org/2018/12/18/spotlight-working-at-home-chef>, is attached as

Exhibit PV1.

5. Home Chef launched its meal kit delivery service in 2014. We opened our first distribution plant in Chicago in October 2014. A true and correct copy of Home Chef's 2017 Fact Sheet is attached as **Exhibit PV2.**

6. Home Chef's sales grew exponentially. By June 2015, Home Chef was delivering 10,000 boxes of meal kits per month. By May 2016, Home Chef was delivering 100,000 boxes per month to over 90 percent of the country and with a team of more than 400 employees. By September 2017, Home Chef was delivering more than 1.5 million meals per month to over 97 percent of the country and we issued press releases regarding this information, true and correct copies of which are available online at <https://www.prnewswire.com/news-releases/home-chef-secures-10-million-in-series-a-funding-300261864.html>, dated May 3, 2016 and attached as

Exhibit PV3, and <https://www.prnewswire.com/news-releases/home-chef-secures-40-million-in-series-b-funding-from-l-catterton-300336801.html>, dated September 29, 2016 and attached as

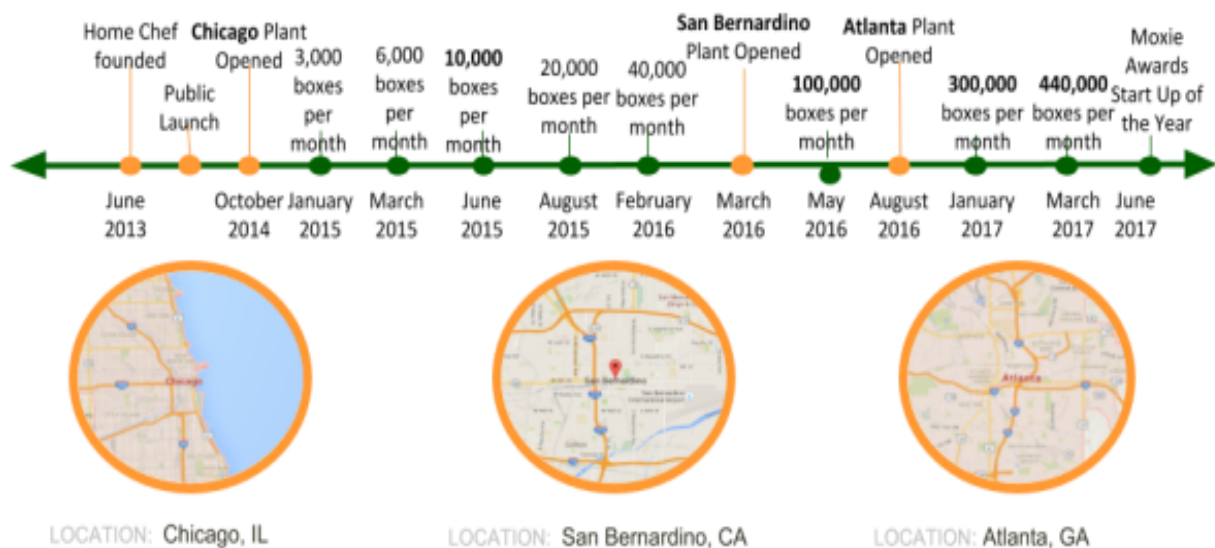
Exhibit PV4.

7. To support Home Chef's rapid nationwide growth, Home Chef opened its second distribution plant in San Bernardino, California in March 2016, followed shortly thereafter by its third production plant in Atlanta, Georgia in August 2016. *See* Ex. PV2 at 2.

8. By February 2017, Home Chef had expanded to a larger headquarters in Chicago to support its team of over 800 employees and the company was delivering nearly 2.5 million meals per month. A true and correct copy of a Home Chef press release from February 2, 2017, which is available online at <https://www.prnewswire.com/news-releases/home-chef-continues-to-expand-market-share-in-growing-meal-kit-industry-300400963.html>, is attached as **Exhibit PV5**.

9. The following is a timeline of Home Chef growth and expansion from its founding in June 2013 to 2017. *See* Ex. PV2 at 2.

Company Timeline



HOME CHEF'S MERGER WITH KROGER AND CONTINUED GROWTH

10. In June 2018, Home Chef finalized a merger with The Kroger Co. ("Kroger"), America's largest grocery retailer, to further expand the company's availability and trade channels by making its products available through Kroger family retail grocery stores nationwide. A true and correct copy of a Kroger press release from June 2018, which is available online at <https://www.prnewswire.com/news-releases/kroger-completes-merger-with-home-chef->

[300670969.html](http://www.prnewswire.com/news-releases/kroger-and-home-chef-to-join-forces-to-revolutionize-mealtime-300653892.html), is attached as **Exhibit PV6**. By that time, Home Chef had shown 150% growth in 2017, with \$250 million in revenue, and employing approximately 1,000 employees across production, marketing, technology, product, design, and customer service. A true and correct copy of a Kroger press release from May 2018, which is available online at <http://www.prnewswire.com/news-releases/kroger-and-home-chef-to-join-forces-to-revolutionize-mealtime-300653892.html>, is attached as **Exhibit PV7**.

11. Beginning in October 2018, Kroger and Home Chef announced the launch of weekly rotating in-store meal kits at Kroger's family of stores nationwide. A true and correct copy of a Kroger press release from October 10, 2018, which is available online at <https://www.prnewswire.com/news-releases/kroger-and-home-chef-kick-off-nationwide-retail-rollout-300728570.html>, is attached as **Exhibit PV8**. To support the retail expansion, Home Chef started providing a new line of Home Chef *Express* products in October 2018, featuring quick-cook meal kits ready to eat in 15 minutes, helping to bring even more variety and convenience to customers with new in-store offerings and providing customers with on-demand options for dinner. *Id.*

12. In 2019, Kroger expanded its offering of Home Chef "Ready to Cook" and "Ready to Eat" meal options from over 900 stores to more than 2,100 Kroger family stores nationwide, with double-digit growth in the fresh meal category. A true and correct copy of Kroger's 2019 Fact Book, which is available online at https://s1.q4cdn.com/137099145/files/doc_downloads/irw/fact_books/2019-Fact-Book.pdf, is attached as **Exhibit PV9**.

13. On October 25, 2021, Kroger announced that Home Chef had reached \$1 billion in annual sales, achieving this ground-breaking milestone in the few years since the company's

launch in 2014. A true and correct copy of a Kroger press release from October 25, 2021, which is available online at <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2021/Krogers-Home-Chef-Surpasses-1-Billion-in-Annual-Sales/default.aspx>, is attached as **Exhibit PV10**.

14. Since its founding, Home Chef has provided over 200 million meals to more than 35 million customers and had more than \$2.5 billion in sales in the United States. Since its merger with Kroger in 2018, Home Chef has had more than \$240 million in retail sales of Home Chef products just through Kroger's family of stores across the United States.

15. Today, Home Chef offers more than 500 products across a variety of categories, including meal kits, heat-and-eat meals, ready-to-eat products, and seasonal meals, among others, starting at \$6.99 per serving. Home Chef is a meal delivery company offering customers many meal options, including meal kits for preparing at home and ready-to-eat meals. A true and correct printout of Home Chef's menu for the week of November 1, 2021, showing a representative selection of Home Chef's meal options, is attached as **Exhibit PV11**, available online at <https://www.homechef.com/our-menus/08-nov-2021/standard>.

16. Home Chef's products can be purchased through our website at homechef.com, at Kroger websites, through Home Chef's and Kroger's mobile phone apps, and through more than 2,200 Kroger stores (Kroger's family of stores), either in the store or online and picked up or delivered. *See* Ex. PV10 at 2.



SELECTION, USE AND REGISTRATION OF HC HOME MARK

17. In the very beginning, Home Chef went by the name “Relished Foods,” but within a year of starting the company, we realized that the brand needed a shorter and catchier name. After some initial brainstorming and domain name searching, I decided to rename the brand as “Home Chef.” Since then, Home Chef has been using and operating under the HOME CHEF name and trademark.

18. Home Chef owns federal registrations with the U.S. Patent and Trademark Office (“USPTO”) for the HOME CHEF word mark, including Registration Nos. 5609384, 5811449, and 5362224). True and correct copies of the registration certificates are attached respectively as **Exhibits PV12, PV13, and PV14.**

19. To further strengthen the company's brand identity and distinguish it from competitors, I commissioned a design company to develop a design suggestive of and consistent with the HOME CHEF name and mark. Among the various options, I selected a design consisting of the silhouette of a fork and a knife inside an outline of a house in 2014. Here is one of our first designs, a knife and fork inside a circle. We worked with a team to switch to a home, make it an outline, modify the shapes of the utensils, switch the placement of the fork and the knife, and flip the arrangement of the knife to be facing inward.



Home Chef's final design and the one we started using in 2014 is shown below (the "HC Home Mark"):



20. Home Chef publicized the HC Home Mark in 2014 and used it then on Home Chef's website and various social media pages.

21. Since its first use in 2014, Home Chef has continuously and consistently used the HC Home mark. While Home Chef has used the HC Home mark in a variety of color combinations over the years, including in black, white, green, orange, and other colors, the design of the HC Home mark has remained unchanged.

22. Home Chef owns federal trademark registrations with the USPTO for the HC Home mark alone, Registration Nos. 5241586, 5294674, and 5786784, as well as registrations for the HC Home mark with the HOME CHEF word mark, Registration Nos. 5609448, and

5598365. True and correct copies of the registration certificates are attached as **Exhibits PV15, PV16, PV17, PV18 and PV19.**

23. Home Chef uses the HC Home mark alone and also with the word mark HOME CHEF. Home Chef uses the HC Home mark as a standalone mark to promote and sell all of its products and services, including for its meal delivery services and its associated meal kits, heat-and-eat meals, ready-to-eat products, and seasonal meals. Home Chef has used the HC Home mark in many colors but Home Chef has maintained the same distinctive design for the mark throughout its use since 2014.

24. Through Home Chef's long, prominent and nationwide use and promotion, the HC Home mark has acquired significant value and consumer recognition. We invested a great deal of time, money, and effort in making that happen since 2014.

HOME CHEF'S NATIONWIDE RENOWN

25. Home Chef is widely recognized as a leader in the meal delivery industry in America and has received significant press coverage over the years, including a number of awards and accolades from reputable national publications recognizing the company for its entrepreneurship, growth, innovation, culture, and customer satisfaction.

26. In 2017, *Entrepreneur Magazine* ranked Home Chef as 24th among the Best Entrepreneurial Companies in America, an annual ranking of businesses based on five factors, including revenue and customers, management efficiency, innovation, financial evaluation, and business valuation. A true and correct copy of Entrepreneur Magazine's company page for Home Chef, available online at <https://www.entrepreneur.com/company/homechef>, is attached as **Exhibit PV20.**

27. In 2017, *Built in Chicago* awarded Home Chef as the “Startup of the Year” in its 2017 Moxie Awards, an annual ranking of Chicago tech companies based on their innovation and growth. A true and correct copy of a June 8, 2017 article from Built in Chicago, available online at <https://www.builtinchicago.org/2017/06/08/2017-chicago-moxie-awards-winners>, is attached as **Exhibit PV21**.

28. In 2017, *Internet Retailer* magazine ranked Home Chef on its “2017 Hot 100 List” of the most innovative e-retailers, an annual ranking of brands that have distinguished themselves as market leaders in e-commerce through innovation, consumer engagement, and customer satisfaction. A true and correct copy of a December 13, 2016 press release from Home Chef, available online at <https://www.prnewswire.com/news-releases/home-chef-named-2017-hot-100-internet-retailer-300376909.html>, is attached as **Exhibit PV22**.

29. In 2018, Inc. 5000 ranked Home Chef as the third-fastest-growing private company in the United States. A true and correct copy of a 2018 article from Inc. 5000, available online at <https://www.inc.com/guadalupe-gonzalez/2018-inc5000-top-companies.html>, is attached as **Exhibit PV23**.

30. Since at least 2018, Home Chef has consistently had the highest rate of customer satisfaction among leading meal kit companies according to the Market Force Information, Inc. A true and correct copy of Market Force Information, Inc.’s April 2020 U.S. Grocery Benchmark Study is attached as **Exhibit PV24**. An image of page 28 of the report is shown below.

Home Chef receives the highest overall satisfaction and has relatively lower churn



Brand (Top 5)	Tried the Brand (# Selected)	Overall Satisfaction (%TB)	Stopped Service (#Yes)	Stopped Service (%Yes)
HelloFresh	1,266	20%	1,111	88%
Blue Apron	568	17%	510	90%
Home Chef	203	23%	148	73%
Plated.	45	20%	43	96%
Sun Basket	44	18%	37	84%



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31. The HC Home mark is directly associated with Home Chef's highest quality meal kits, ready-to-cook meals, ready-to-eat meals, and meal delivery services. Consumers everywhere recognize the HC Home mark as a source identifier for Home Chef and its products and services. As a result, the HC Home has obtained significant value and recognition and it is well-known and immediately recognizable by consumers throughout the United States.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 3, 2021

Patrick Vihtelic